



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 343-99
22 November 1999



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you underwent spinal fusion surgery on 19 April 1996. You were evaluated in an orthopedic clinic on 15 July 1996, and your condition was assessed as "well healing" at that time. The examining physician recommended that you undergo "PT for conditioning", and he exempted you from physical readiness testing, as well as running, jumping, push-ups and sit-ups, for six months. On 10 June 1997, a medical board recommended that you be evaluated by the Physical Evaluation Board, based on the suspected non-union of a C5-6 spinal fusion, which you declined to have corrected surgically, and spinal stenosis. On 5 September 1997, the Physical Evaluation Board made recommended findings that you were unfit for duty because of the latter condition, which it rated at 20%. You accepted those findings on 9 September 1997, and were discharged with entitlement to disability severance pay on 3 November 1997.

The Board was not persuaded that you received inadequate care following your surgery in April 1996 which resulted in the permanent aggravation of your cervical condition, as your contentions to that effect are not substantiated by the available records. It concluded that,

irrespective of the cause of your disability, the available records do not demonstrate that you were entitled to a disability rating in excess of 20% at the time your case was finalized by the Physical Evaluation Board. Accordingly, the Board was unable to recommend any corrective action in your case, and your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director